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In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1874

DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS, RALPH EDWARDS, COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

Appellants appeal from the Judgment of the United States District Court for the Eastern District of North Carolina, entered on April 12, 1976, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, that substantial questions are presented, and that this Court should exercise such jurisdiction in this case.

OPINION BELOW

The Memorandum Decision of the Three-Judge District Court for the Eastern District of North Carolina is not yet re-

ported. A copy of the Memorandum Decision dated March 16, 1976 is attached hereto as Exhibit A. (A. p. 20). A copy of the Judgment dated April 8, 1976 is attached hereto as Exhibit B. (A. p. 33). A copy of the Notice of Appeal filed April 26, 1976 is attached hereto as Exhibit C. (A. p. 35).

JURISDICTION

This suit was brought by the Appellee, North Carolina Prisoners' Labor Union, Inc., on behalf of itself and all its members, seeking injunctive and declaratory relief and monetary damages under the authority of 42 U.S.C. § 1983, 28 U.S.C. §§ 1343 and 2201.

A Three-Judge Court was convened pursuant to 28 U.S.C. §§ 2281 and 2284 to consider the constitutionality of regulations issued by the Secretary of the North Carolina Department of Correction on March 26, 1975 providing that "No employee of the Department shall authorize the use of Departmental facilities for such organization [declaring itself to be or acting as an inmate labor organization], negotiate, bargain with, or otherwise enter into discussion with such an organization or representative of such organization, nor permit such organization to hold meetings or assemble on Departmental property." A copy of the General policy issued March 26, 1975 is attached hereto as Exhibit D. (A. p. 37). The Memorandum Decision of the District Court was filed on March 16, 1976. The Judgment was filed on April 12, 1976 and Notice of Appeal was filed on April 26, 1976.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253, which authorizes an appeal from an Order of a Three-Judge Court granting a permanent injunction.

QUESTIONS PRESENTED

(1) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS REQUIRED BY THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, TO EXTEND TO THE NORTH CAROLINA PRISONER'S LABOR UNION, INC., THE IDENTICAL PRIVILEGES EXTENDED TO THE PROGRAMS OF THE JAYCEES, ALCOHOLICS ANONYMOUS AND THE BOY SCOUTS OF AMERICA, ORGANIZATIONS WHICH PROMOTE PROGRAMS WHICH HAVE BEEN DETERMINED TO MEET VALID REHABILITATIVE NEEDS OF THE CORRECTIONAL SYSTEM?

(2) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS REQUIRED BY THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, TO PERMIT THE NORTH CAROLINA PRISONERS' LABOR UNION, INC., THE PRIVILEGE OF BULK MAILING INTO THE UNITS OF THE DEPARTMENT OF CORRECTION BECAUSE THE DEPARTMENT PERMITS THAT PRIVILEGE TO THE JAYCEES?

(3) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION CAN CONSTITUTIONALLY PROHIBIT INMATES IN ITS CUSTODY FROM SOLICITING AND INVITING OTHER INMATES TO JOIN THE NORTH CAROLINA PRISONERS' LABOR UNION, INC.?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

This is an action for declaratory and injunctive relief and monetary damages brought pursuant to 42 U.S.C. § 1983 against David L. Jones, Secretary of the North Carolina Department of Correction, and Ralph Edwards, Director of the

Division of Prisons of the North Carolina Department of Correction, for alleged deprivation of rights secured by the Constitution and laws of the United States. The Appellee, the North Carolina Prisoners' Labor Union, Inc. (hereinafter the "Union"), claimed that the Defendants refused to allow prisoners in their custody to meet for the purpose of forming a union, or to allow union organizers to enter the prison facilities, while permitting the existence within the prison system of other inmate organizations, among which are the Jaycees and Alcoholics Anonymous; that each of these approved organizations have chapters in numerous units and are permitted to hold meetings and have outside representatives of these organizations meet with the inmate population from time to time. Further, the Jaycees are accorded the privilege of mailing their newsletters in bulk to the various prison units at which Jaycee chapters are located.

On March 26, 1975, Appellant, David L. Jones, Secretary of the North Carolina Department of Correction, issued regulations which provided, in pertinent part, that "No employee of the Department shall authorize the use of Departmental facilities for such organization, negotiate, bargain with, or otherwise enter into discussion with such an organization or representative of such organization nor permit such organization to hold meetings or assemble on Departmental property." (Exhibit D., p. 37).

On April 25, 1975 Judge F. T. Dupree, Jr., denied the Union's Motion for Preliminary Injunction and by separate Order dated April 29, 1975, certified the pendency of an action requiring a Three-Judge Court.

On March 16, 1976, the Three-Judge Court filed a Memorandum Decision finding the Secretary's regulation to be unconstitutional and holding that (1) inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; (2) the Union shall be accorded the privilege of bulk mailing to the extent, and only to the extent that such a privilege is accorded other organizations; and (3) the Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations. . ." (Exhibit A., p. 20). On April 12, 1976, the Court filed a Judgment incorporating the provisions of the Memorandum Decision (Exhibit B., p. 33) which further provided that "Free persons otherwise entitled to visitation with inmates . . . shall not be denied access to such visitation by reason of their association or affiliation with the Union."

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

In reliance on what it misconceived to be the holding of PELL v. PROCUNIER, 417 U.S. 817 (1974); without giving any consideration to or even citing PAKA v. MANSON, 387 F. Supp. 111 (D. Conn. 1974) to the contra, and totally discounting the fears and concerns of the administrators of the North Carolina Department of Correction in the maintenance of "security, order and rehabilitation", PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974), the District Court, citing the First Amendment and the Equal Protection clause of the Fourteenth Amendment, imposed upon the North Carolina Department of Correction the North Carolina Prisoners' Labor Union, Inc. And, of course, the District Court has now totally eliminated administrative control over such matters within the Department of Correction. So long as the Department continues to find a rehabilitative design in the programs of the Jaycees, Alcoholics Anonymous and the Boy Scouts of America, then, under the District Court's reasoning, it will be unable to deny access to any other organization and will be responsible to provide co-equal privileges with the approved organizations which were granted entry into the system as a result of their satisfying valid rehabilitative objectives. Thus, the Court has placed the Department in the position of either opening its doors and facilities to all organizations or cancelling the programs of the Jaycees, Alcoholics Anonymous and Boy Scouts of America, and thereby eliminating the Fourteenth Amendment basis to the Court's decision. It would indeed be regrettable if, in order to regain control over the Department, it would be neces-

sary to cancel the most meaningful programs currently available to prison inmates.

The design of the response of the North Carolina Department of Correction in this case was based upon PAKA v. MANSON, supra, a case involving identical concerns of the Connecticut Department of Correction in which the Connecticut District Court reached the opposite result from the North Carolina District Court. Unfortunately, our Court found no need to either cite or distinguish PAKA.

In PELL v. PROCUNIER, supra, this Court articulated the several state purposes served by imprisoning criminal offenders and the problems such imprisonment presented:

> An important function of the corrections system is the deterrence of crime. The premise is that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses. This isolation, of course, also serves a protective function by quarantining criminal offenders for a given period of time while, it is hoped, that the rehabilitative processes of the corrections system work to correct the offenders demonstrated criminal proclivity. Thus, since most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody. *Finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.* It is in light of these legitimate penal objectives that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners. 417 U.S. at 822-823 (Emphasis added.)

Secretary Jones of the Department of Corrections has strongly opposed the formation of the Prisoners' Union. As he testified in his Affidavit:

> It is my belief that the responsibility for administering the prison system lies with the Secretary of Correction

and persons under his supervision. I also recognize the existence of the North Carolina Statute forbidding state agencies to negotiate with unions. Although this act might not specifically pertain to inmate unions, I believe that the spirit of the law does cover the situation. Furthermore, since the day I became Secretary of this Department, I have kept an open line of communication with inmates. I have spoken to inmates personally and discussed their problems with them. I have directed my immediate staff to respond to every complaint submitted to me by an inmate and provide the inmate with a response. Whenever any inmate made what appeared to be a legitimate complaint, either I directly or a member of my staff has taken corrective action. When the Inmate Grievance Commission [G.S. 148-101, et seq.] came into existence on July 1, 1974, I directed that the employees of the Department of Correction to cooperate with the Inmate Grievance Commission in order that that agency might be an effective and meaningful means of resolving inmate grievances. I authorized the establishment of an internal grievance procedure within the Division of Prisons. Thus, I believe that I have made every effort in keeping the lines of communication open to my office and insuring that persons in the custody of the Department of Correction would always have access to a means of airing their complaints. Because I believe that inmates have an effective means of channeling their grievances, I have refused to recognize the so-called North Carolina Prisoners' Labor Union.

The existence of a union of inmates can create a divisive element within the inmate population. In a time when the units are already seriously overcrowded, such an element could aggravate already tense conditions. The purpose of the Union may well be worthwhile projects. But it is evident that the inmate organizers could, if recognized as spokesman for all inmates, make themselves to be powerful figures among the inmates. If the Union is successful, these inmates would be in a position to misuse their

influence. After the inmate Union has become established, there would probably be nothing this Department could do to terminate its existence, even if its activities became overtly subversive to the functioning of the Department. Work stoppages and mutinies are easily foreseeable. Riots and chaos would almost inevitably result. Thus, even if the purposes of the union are as stated in the Complaint, the potential for a dangerous situation exists, a situation which would not be brought under control. Thus, my responsibilities to the people of North Carolina, to the employees of the Department of Correction, and to the inmates themselves necessitate that this Department refuse to recognize the legitimacy of the union. . . .

There was also submitted the Affidavit of Ralph Edwards, Director of the Division of Prisons. Based upon his experience in Corrections and his observations of the situation in the Division of Prisons, he testified in his Affidavit:

In evaluating the potential impact of a prisoners' union, a reasonable distinction was drawn in evaluating its purpose as a separate body composed only of inmates with the intention of shaping administrative policy. The Division of Prisons was unable to validate a substantive rehabilitative purpose or associative purpose in the design of the organization. To accept the organization objections of a prisoners' union would be to approve an organization whose design and purpose would compromise the order and security of the correctional system . . .

The Division of Prisons is specifically responsible for maintaining the secure custody of persons confined in its facilities. The goals of this Division are to maintain secure custody and to provide rehabilitation to those inmates who can be rehabilitated. As stated, only two outside organizations [Jaycees and Alcoholics Anonymous] have been permitted to form inmate organizations within the prison system. These organizations have been demonstrated to have significant rehabilitative value and may continue to function only as long as they fill a legitimate rehabilitative need of the inmates. They have also been determined not to constitute any threat to the order or

security of the institution. Neither organization purports to act as spokesman for the inmate.

The creation of an inmate union will naturally result in increasing the existing friction between the inmates and prison personnel. It can also create friction between union inmates and nonunion inmates. Furthermore, the interests of all inmates are not the same. Those inmates with long term sentences do not have the same needs and goals of those of short term inmates. It is quite possible that inmates with long term sentences would take over a union to the detriment of the prison system and persons within its custody. If a union is permitted to be organized within the prison system, a potentially uncontrollable situation will result. Even if the purposes of the union are peaceful and productive at the outset, abuse of the organization can result in a Frankenstein's monster which cannot be put down. It will enable certain inmates to establish themselves as "big men" within the prison system. They will be power figures whom other inmates believe to have special authority, special rights, and special powers. Propelling an inmate into such a position would create a hazardous situation. The security of the system itself and of the persons confined in it would inevitably be in danger. If the union maintains a foothold, there would be virtually no way to control it.

That the possibility of violence is a continuous condition of prison life is recognized in UNITED STATES ex rel MILLER v. TWOMEY, 479 F. 2d 701. The fears of Secretary Jones and Director Edwards are not unfounded.[1] While it is not yet pos-

[1]In the Deposition of James W. Mullen, Warden of the Adult Correctional Institutions for the State of Rhode Island, he testifies at page 55:

Q: Do you find any exploitation of one group of inmates by another, say the younger inmates exploited by the older inmates, or the long-termers exploiting the short termers?

A: We had the young inmates break away from the older inmates, and to us, the two words that were mentioned, the young inmates wanted to form what was called the Youth Commission, and they wanted to break away from the, what they called the over the hill gang.

Now, this is gospel truth, and this happened within the last year. The unfortunate part about it, that the young inmates didn't realize how super-violent, or they didn't believe what they read or heard about some of the older guys.

sible to make accurate predictions of future behavior of prisoners, experience does count for something.

THE BALANCE OF INTERESTS

In balancing the competing interests developed above, this Court is bound by the teachings in PELL and no greater reason is discernable for adhering to a more stringent method of interest balancing than in PELL where this Court rejected the contention of inmates that a prison regulation which provided that "Press and other news media interviews with specific individual inmates will not be permitted" violated their First

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We had 40 members of the Youth Commission stabbed. There was no more Youth Commission, no more problems. People had been arrested and charged within the institution, and that has been the end of any of that type of thing. We did have these young guys attempt to break loose from the older inmates by verbal threats or by verbal abuse, and they were handled by the older inmates without regard to prosecution or whatever. It was done openly and it was done in 5 minutes. The Youth Commission was in ruins.

Q: When you say the older inmates, would you also characterize them as the Reform Association?

A: I would say so, because my experience with them, you know, they've been through the training schools, they've been here before. They have served time in other prisons, yes.

Q: So in other words, any time you have a maverick organization, the organization which pre-exists, will attempt to quash it?

A: Yes, sir.

Warden Mullen, whom the Three-Judge Court characterizes as concluding that the National Prisoners' Reform Association at his institution "is going in a positive direction" further testifies, concerning the North Carolina situation at page 58 of his transcript as follows:

A: . . . [t]hat as far as the union is concerned, I, you know, I think it's dangerous, and again, I only—I can't discuss my situation, because I only can talk about 600, and you're talking about 13,000.

I think in looking at the picture of that situation, you know, at any given moment, through any type of communication, you could have your hands full. If the word was given that a prison in Raleigh that—I don't even know if there is one there—that at 12:00 tomorrow, boys, we don't move. We just sit there. The State of North Carolina is in big trouble. You know, you'd have to get the Army to straighten it out for that violence in such an area, so spread out, you know, in that span, you know. It scares me.

The situation here, you know, it's a little different. The State Police Barracks is right here. The National Guard Armory is 3 miles away. So, you know, I'm working at an entirely different ballgame. I think if you ever had anything that was organized, I don't think you'd have—well, I wouldn't say 13,000 people go beserk at once, because you're not going to get 100% from everybody, but I do think that looking along the lines of the type of facilities that you have, and I don't know the type of units and special offenders prison, I don't know. I think you'd have some super problems.

and Fourteenth Amendment rights, and also contentions of members of the press that they had a constitutional right to interview any inmate willing to speak to them, in the absence of an individualized determination that the particular interview might create a clear and present danger to the prison security. "In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations [of institutional security]" and "so long as reasonable and effective means of communication remain open. . .[2] 'prison officials must be accorded great latitude.'" CRUZ v. BETO, 405 U.S. 319, 321 (1972).

The Court also relied upon the Deposition of Paul W. Keve, Director of Adult Corrections for the State of Delaware, a correctional system with an inmate population of "not quite 800" [transcript, p. 26] which "includes everybody in prison, all adults in prison in Delaware for any reason." [transcript, p. 26] Although supporting the "union model" in corrections, Director Keve describes the causes of the Central Prison, North Carolina, riot of April 18, 1968 as follows:

Q: You are aware that the riot occurred when Mr. Bounds was attempting to regain control from the so-called "bulls of the yard." The prison bosses, are you not?

A: Yes.

Q: And that a very sophisticated business had been developed by a few individuals at Central Prison?

A: Right.

Q: And that when Mr. Bounds attempted to take away an extremely profitable business from the individuals they completely took control over the inmate population and resulted in a riot?

A: Right.

Q: Is this not an example of what can happen when certain prisoners gain power in a penal institution?

A: Yes, it is an excellent example of that.

Q: And their power was for personal aggrandizement rather than the good of the institution?

A: That is right. (Transcript, pp 31-32)

[2]The following reasonable and effective means of communication are available to the inmates of the North Carolina Department of Correction:

(1) *Correspondence:*
5 NCAC 2D.0301 *Inmate Use of the Mails*
(a) Inmates may write to anyone . . .

(2) *Public Communications*
5 NCAC 2D.0502 *Access Procedure*
(d) To Prisoners
(1) Visitors may be permitted to talk to inmates of the State prison system who are willing to talk to them. The time, place, and manner of such

Additional guidance in making an analysis of whether the restriction challenged in this case is inconsistent with status as a prisoner may be derived from other cases ajudicating the legality of restraints on the associational rights of prisoners. In upholding the dismissal of the prisoner's action alleging that his right to privacy was violated by monitoring his conversations with prisoners, the Court in CHRISTMAN v. SKINNER, 468 F. 2d 723, 726 (2nd Cir. 1972), quoted from LANZA v. NEW YORK, 370 U.S. 139, 143 (1962), "'that a jail shares none of the attributes of the privacy of a home, an automobile, an office or hotel room.'" Protection of privacy does not extend to the inmates of a prison confined there after a due process determination that they have violated criminal laws and conviction of crime carries not only loss of liberty, but other impairments associated with membership in a closely supervised prison community. The range of free activity for prisoners within the prison is relatively small. Despite the prominence of the right of association among the constitutional rights enjoyed by citizens, it is clear that a convicted felon, even after he has been released from prison on parole, may have substantial restrictions placed upon his associational relations with other persons. In illustrating the extent to which a parolee's liberty may be curtailed, the Court in HYSER v. REED, 318 F. 2d 225, 239 (D.C. Cir.) (Burger, J.), cert. denied 375 U.S. 957 (1963), said:

> The United States cannot constitutionally impair a citizen's right to leave the District of Columbia or frequent pool halls, but it can do so to Hyser and other appellants [parolees] whose freedoms have been substantially abridged in accordance with the requirements of due process.

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conversations shall be subject to restrictions appropriate to the parties and circumstances.

(2) Media representatives may be permitted to interview inmates of the State prison system who consent in writing to be interviewed for a stated purpose and without compensation. . . .

(3) *Inmate Grievance Procedures*

N.C.G.S. § 148-101 et seq., *Inmate Grievance Commission* -

The Inmate Grievance Commission is established as a separate agency within

Freedom to worship collectively which is an associational right explicitly protected by the Free Exercise Clause of the First Amendment may be curtailed if it threatens prison discipline or security. SHARP v. SIGLER, 408 F. 2d 966 (8th Cir. 1969); KNUCKLES v. PRASSE, 302 F. Supp. 1036, 1056-1058 (E.D. Pa. 1969), aff'd, 435 F. 2d 1255 (3rd Cir. 1970), cert. denied, 403 U.S. 936 (1971).

Although the diverse activities constituting "freedom of speech . . . peaceably to assemble, and to petition the government for redress of grievances," are all designed to enable a citizen to equip himself to exercise his judgment in casting his ballot, nevertheless one convicted of a felony may be wholly deprived of the basic right to vote even though he has served his sentence. RICHARDSON v. RAMIREZ, 418 U.S. 24 (1974). It would seem to be a dubious contention that a convicted felon who can constitutionally be deprived of his franchise even after he has fully served his sentence is nonetheless entitled to constitutional protection of a right to have his vote as a prisoner weighed in a democratic process determining what programs and activities shall be permitted among prisoners. And, perhaps more relevant to the instant case, a former felon may be constitutionally barred from holding office in a union. DeVEAU v. BRAISTED, 363 U.S. 144 (1960).

In light of these precedents and the analysis of the competing interests involved in this case, it is obvious that the District Court erred in finding for the Union. Concededly the inmates' associational and speech interests may be abridged by the denial of the right to organize. Thus, on appeal this Court should conclude that the State's interest predominates and that the Secretary's refusal to permit the organization and operation of a prisoners' union within the prison system

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the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. . . .

5 NCAC 2G.0301 *General*

The Inmate Grievance Procedure is designed to provide efficient administrative procedures for the resolution of complaints. The Division of Prisons seeks to reduce tension and provide a stable rehabilitative atmosphere by providing formal channels for communication of complaints. . . .

in the State of North Carolina does not constitutionally restrain any right of the inmates.

EQUAL PROTECTION

The Union asserted that the inmates in the custody of the North Carolina Department of Correction were denied equal protection because both the Jaycees and Alcoholics Anonymous are recognized and accorded the privilege of holding meetings, but the Union was not.

One possible claim is that the State has differentiated between prisoners in its custody because it permitted the Jaycees, Alcoholics Anonymous and Boy Scouts of America to organize and it denied that right to the Union. This claim may be an ingenious roundabout way of laying a foundation for the argument that the state must show "compelling state interest" to justify such a differentiation, for fundamental rights of speech and association are involved Cf. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT v. RODRIGUEZ, 411 U.S. 1, 17 (1973); GREER v. SPOCK, No. 74-848 (U.S., March 24, 1976). While the attempt is intriguing, it is not wholly convincing. The well-reasoned opinion in MORALES v. SCHMIDT, 489 F. 2d 1335 (7th Cir. 1973), aff'd on rehearing *en banc*., 494 F. 2d 85 (1974), is persuasive that the State need not show a compelling state interest to differentiate between prisoners and nonprisoners. Even if this heavy standard were applied, however, adherence to the consistent point of view that, "finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves", PELL v. PROCUNIER, supra, 417 U.S. at 823, would fully justify classifying the state's interest in preventing formation of a prisoners' union as "compelling".

Another possible equal protection claim is that if certain group activities were permitted within a prison, then it is arbitrary and capricious not to permit inmates to engage in any other kind of group activity they may choose. However, organizations like the Jaycees, Alcoholics Anonymous and the Boy Scouts of America which are allowed to meet within the

prison system have functions which are different from those of the Union. The specific purpose of the Union is to bring to the surface, for collective action, grievances and complaints of the prisoners. The restrictions on a state not to deny equal protection does not leave it without permission "to recognize degrees of harm" and to "confine its restrictions to those classes of cases where the need is deemed to be the clearest." MINNESOTA ex rel PEARSON v. PROBATE COURT, 309 U.S. 270, 275 (1940). Being allowed to participate in a permitted kind of group activity is not to be equated with participation in making the determination of what group activities shall be permitted. The nature of the Union and its contemplated purposes of direct participation with prison authorities in shaping administrative policy, provides a reasonable basis for distinguishing the activities of the Union from the kind of inmate participation afforded in the Jaycee and AA programs.

As Director Edwards testified in his Affidavit:

> The Complaint charges that the Inmate Labor Union is denied equal protection of the laws in that the Junior Chamber of Commerce and Alcoholics Anonymous are permitted within the prison system. I should first point out that these are the only two private organizations which are allowed to function in the North Carolina Prison system. They are permitted to operate because they have been found to demonstrate legitimate rehabilitative purposes and to fill the needs of the inmates. They both operate under specific guidelines and their activities are regulated.
>
> * * *
>
> The goal of the Alcoholics Anonymous Program is also adapted from the program structure of an organization outside the confines of the prison system. The objectives of the Alcoholics Anonymous program are to provide therapeutic support, insight, and an opportunity for productive sharing of experiences among those who have en-

counted the deteriorative effect of alcoholism. Alcoholics Anonymous is structured on a peer pressure basis which begins while the individual client is confined and is intended to have carry-over effects into Alcoholics Anonymous groups in the free community.

Prior to the development of Alcoholics Anonymous programs, it was necessary that the design of the program and the intended goals were justifiable within the confinement facilities of this State. The goals and the objectives of both the Alcoholics Anonymous and the Jaycee program were presented to correctional staff as meaningful courses of action with positive goals relative to productive restoration of offenders to active, lawful participation in the community. The goals of both organizations were scrutinized, evaluated, and approved. Operational guidelines have been drawn up in each instance following approval to certify that the primary objective of the correctional system—to maintain order and security—would not be abridged by the operation of these programs within the confines of the prison units.

Although set in the context of a military reservation, the recent decision of this Court in GREER v. SPOCK, supra, is equally applicable to the case at bar. As this Court notes in footnote 10:

> The fact that other civilian speakers and entertainers had sometime been invited to appear at Fort Dix did not of itself serve to convert Fort Dix into a public forum . . . The decision of the military authorities that a civilian lecture on drug abuse, a religious service by a visiting preacher . . . or a rock musical concert would be supportive of the military mission of Fort Dix did not leave the authorities powerless thereafter to prevent any civilian from entering Fort Dix to speak on any subject whatever.

Finally, although set in a different context, the rationale of ROSS v. MOFFITT, 417 U.S. 600 (1974) is equally applicable to the conclusion reached by the Three-Judge Court in this case:

> Despite the tendency of all rights "to declare themselves absolute to their logical extreme", there are obviously limits beyond which the equal protection analysis may be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment "does not require absolute equality or precisely equal advantages."

MASS MAILING

The Union also contended that its rights had been violated by the Defendants' refusal to allow the Union Newsletter to arrive in bundles for distribution.

In this regard Director Edwards testified in his Affidavit that:

> . . . [I]nmates are not prohibited from belonging to a union. They are in fact prohibited from organizing activities such as soliciting other inmates to join the Union. They are permitted to receive publications sent to them directly, but they are prohibited from receiving packets of material from unions or any other source for redistribution. This is in accordance with the Department's policy requiring publications mailed to inmates be sent directly from the publisher, . . .

Multiple copies of the Union Newsletter and other organizing materials can only be intended for distribution among inmates within the system and as a tool towards organization of a union which may be properly prohibited by prison authorities. To the extent that multiple copies necessarily imply distribution to a group, they involve different risks to the security of the institution than the individual prisoner reading his personal copy in a cell.

There is no constitutional violation in the decision to return bundled copies of the Union Newsletter and other materials clearly intended for further distribution among other inmates or for use in union organizing. As Mr. Justice Stewart clearly pointed out in GREER v. SPOCK, supra:

> The guarantees of the First Amendment have never meant "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please."

CONCLUSION

The problems of prison management have been properly described as "complex and intractable, *** not readily susceptible of resolution by decree," a fact which finds expression in "a broad hands-off attitude towards problems of prison administration" as adopted "traditionally," by "federal courts." PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974). After all, "courts possess no expertise in the conduct and management of correctional institutions." FINNEY v. ARKANSAS BOARD OF CORRECTION, 505 F. 2d 194 (8th Cir. 1974). Because of this want of judicial expertise, "prison officials must be accorded latitude in the administration of prison affairs," CRUZ v. BETO, supra; FRAZIER v. CICCONE, 506 F. 2d 1022 (8th Cir. 1974), and their judgments are entitled to "great weight" ROSS v. BLACKLEGE, 477 F. 2d 616 (4th Cir. 1973). Particularly "[W]here state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." PROCUNIER v. MARTINEZ, supra, at 405.

It is submitted that the decision of the Three-Judge District Court in this case is a misreading of PELL v. PROCUNIER, supra, and CRUZ v. BETO, supra. Moreover, it is contra to PAKA v. MANSON. In holding the First Amendment and the Equal Protection Clause of the Fourteenth Amendment applicable to the facts of this case, the District Court has emasculated the administrative discretion of prison authorities and created an intolerable situation in which they must exercise their responsibilities. Any one of the questions presented, much less in combination, present questions of immediate, vital importance, not only to the North Carolina Department of Correction, but also to the United States Bureau

of Prisons and to the correctional systems of our sister states. We believe that the questions submitted are truly substantial to correctional administration, presenting issues of the most vital public importance and therefore respectfully submit that probable jurisdiction should be noted.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General

Jacob L. Safron
Special Deputy Attorney General

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
THREE-JUDGE COURT
No. 75-0089-CRT

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,

Plaintiff

v.

DAVID L. JONES, Secretary of North Carolina Department of Correction; RALPH EDWARDS, Commissioner of North Carolina Department of Correction,

Defendants.

MEMORANDUM DECISION

(Heard February 6, 1976 Decided March 16, 1976)

Before CRAVEN, Circuit Judge, BUTLER, Senior District Judge, and DUPREE, District Judge.

Norman B. Smith (Smith, Patterson, Follin, Curtis & James, Greensboro, North Carolina) and Deborah G. Mailman, for Plaintiff; and Rufus L. Edmisten, Attorney General of North Carolina, Jacob L. Safron, Special Deputy Attorney General, and James Peeler Smith, Senior Administrative Assistant, Raleigh, North Carolina, for Defendants.

CRAVEN, Circuit Judge:

This is a suit brought pursuant to 42 U.S.C. § 1983 to redress the deprivation of constitutional rights by officers of the state acting under color of state law. The plaintiffs' corporate name is said by its counsel to be a misnomer. Permission to operate as a true "labor union" is not sought. The labor-management relations laws of the United States are thus irrelevant and are not invoked. But it is duly incorporated as an eleemosynary institution under the laws of the State of North Carolina.[1] Its members and officers are inmates of the North Carolina Department of Correction. Its stated purposes are to work legally and peacefully to alter or eliminate practices of the Department of Correction which are thought to be in conflict with the just, constitutional and social interests of all persons.

The defendants are sued in their official capacities, Mr. Jones as Secretary of the North Carolina Department of Correction, and Mr. Edwards as Commissioner of the North Carolina Department of Correction.

The complaint asks for a permanent injunction against all acts of the defendants declared to be unconstitutional, the award of $100,000 in damages, reasonable attorneys' fees, as well as the usual prayers for the taxation of costs and for such other and further relief as to the court may seem just and proper. We may put some of these prayers to one side.

Damages. Because they are not sued individually, *see Burt v. Board of Trustees*, 521 F.2d 1201 (4th Cir. 1975), any recovery obtained against these officers of the state would have to be paid out of the state treasury. The eleventh amendment bars such an award against the state, and a § 1983 action

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[1]Curiously, the Charter of Incorporation issued by the Secretary of State of North Carolina shows the corporation purposes to be "the promotion of charitable labor union purposes" and to organize a "prisoners' labor union at every prison and jail in North Carolina to seek through collective bargaining . . . to improve . . . working . . . conditions . . .."

Since it is clear beyond argument that no association of prisoners may operate as a true labor union pursuant to the NLRA, and this Union disclaims any such intention, and since it is also clear that the State may lawfully refuse to negotiate with or contract with any labor union, see p. 12 *infra*, we think it of no legal significance that the charter purports to authorize more than can lawfully be accomplished.

against officers of the state falls within the bar of the amendment whenever the monetary impact is upon the state treasury. *Edelman v. Jordan*, 415 U.S. 651, 662-663 (1974).

Attorneys' Fees. 42 U.S.C. § 1983 contains no section authorizing the award of attorneys' fees to counsel. Nor does any other act of Congress authorize such an award on the facts of this case. As will appear below, the rights of the Union and its inmate members are so narrow and the resistance of the defendants so limited it cannot be said that defendants' conduct amounts to obdurate obstinancy. *See Bradley v. School Board*, 472 F.2d 318 (4th Cir. 1972), *vacated on other grounds*, 416 U.S. 696 (1974). Since such an award is authorized neither by statute nor federal common law, it must be denied. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975).

I.

Coming to the question of injunctive relief, what we do *not* decide in this case is far more important than what we *do* decide. The most important question is whether prisoners of the state have a constitutional right to join a corporate association of inmates. The Union insists that the first amendment right of the people peaceably to assemble, and to petition the government for redress of grievances, extends to prisoners and that application of that principle validates the Union and the right of inmates to join it.

The defendants do not counter with a flat denial. Instead they take the moderate position that the right of the prisoners to assemble under the first amendment must be balanced against the need of the state to maintain order, and that the state's need is great and that of the inmates relatively minor because there are already established procedures for the channeling of grievances, including the legislatively established Inmate Grievance Commission. If we understand the defendants' position correctly, it is that they fear the possibility of concerted group action but are not gravely concerned with mere association of inmates in the Union. Thus the plaintiff's contention that the Constitution protects the right of an inmate to join an inmate association is blunted by defendants' response that it may lawfully regulate such association as to time, manner and place. Instead of being asked by the defendants to hold that plaintiff has no right to exist in the prison system, we are asked instead "to arrive at a balance between the interest of the prisoners in associating together within a prison unit and the interest of the state in maintaining internal security within the prison." Page 3, Defendants' Memorandum.

We think the broader question urged by plaintiff is not so sharply presented that we should undertake to decide it. Since the parties agree that the defendants permit inmates to join the Union, our undertaking to decide whether they may do so would be advisory. Indeed, we would lack jurisdiction to do so, but for the peripheral, and much less important questions, that may be said to constitute a case or controversy.[1A] *See Muskrat v. United States*, 219 U.S. 346 (1911).

II.

The lesser questions we *do* decide are presented us in the following fact context:

1. Inmates are permitted to join a union and have been and are being permitted to join the North Carolina Prisoners'

[1A] As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues "concrete legal issues, presented in actual cases, not abstractions," are requisite. . . . It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudical [sic] interferences upon the other.

United Public Workers v. Mitchell, 330 U.S. 75, 89-90 (1946) (footnotes omitted).

"The duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted in the particular case before it. . . . No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard."

Swift & Co. v. Hocking Valley Ry., 243 U.S. 281, 289 (1917).

Labor Union, Inc. Some 2,000 prisoners have already joined.[2] There are no membership dues although dues are authorized by the by-laws. The union is an organization of inmates associated together for the purpose of working for prison reform.

2. Although permitting membership, the defendants oppose the solicitation of other inmates to join and have made solicitation an infraction of its general disciplinary rules.

3. Not only is personal solicitation by inmate to inmate forbidden but so also is solicitation by correspondence or by newsletter or magazine. Indeed, solicitation by anyone by any means is prohibited.

4. Some newsletters addressed to certain inmates have been returned as nondeliverable. Because of the apprehension that such publications may contain articles slanted to encourage membership the defendants enforce their general rule forbidding the receipt of bulk mail. They will not permit an inmate to receive a bundle to be redistributed by him to other inmates.

5. Union meetings are forbidden. Employees of the Department of Correction are forbidden to negotiate with any person acting as a representative of any union, and no outsider will be admitted into a prison unit for the purpose of soliciting union membership.

6. Disparate treatment is accorded other organizations. Bundles of newsletters are allowed to be received from the Junior Chamber of Commerce, and redistribution to individual inmates is permitted.

7. Inmate members of the JC's are allowed to hold meetings in the prison units, and those meetings may be attended by outside speakers, outside JC members and friends from free society. The same is true of Alcoholics Anonymous, and in one institution a troop of the Boy Scouts of America has been permitted to operate. Prisoners are permitted to assemble for religious services.

8. Due sometimes to mistake, sometimes to gaps in the formulation of policy and its execution, and especially due to the

[2]Affidavit of Vernon W. Rich. The state neither admits nor denies that this number accurately reflects the Union's membership.

very nature of this lawsuit, there have been a number of recent incidents amounting to a denial of the sixth amendment right of a prisoner to legal representation. Most of the incidents have involved the utilization of paralegals and the suspicion of lower echelon prison administrators that the paralegals were engaged in soliciting membership rather than in the implementation of this lawsuit or other court proceedings. At no time have the defendants themselves countenanced the denial of legal representation, and it is established policy that the use of paralegals is permitted.

Both plaintiff and defendants propose detailed findings of fact that would enable us to infer whether, as a matter of penology, an inmate union is good or bad. The state has offered in evidence a book by Peter Remick titled *In Constant Fear*[3] as related to James B. Schuman, a freelance writer. Mr. Remick is an inmate at a Massachusetts prison located at Walpole. His conclusion is that attempts to liberalize traditional prison regulations and to reform Walpole have resulted in chaos and increasing violence. The plaintiff counters with a book, also received in evidence, by Paul W. Keve entitled *Prison Life and Human Worth*.[4] Mr. Keve has far better credentials than does Mr. Remick, but conversely, he is not so deeply immersed in the subject matter. He has served as Commissioner of Corrections for Minnesota and is now Director of Adult Corrections for the State of Delaware. Generally, he seems to favor more lines of communication between inmate and correctional officer, and to achieve it, favors permitting what he calls inmate councils or organizations of prisoners such as the Union in this case. We have also been furnished depositions and affidavits of other experts and persons experienced in penology including those of the defendants.

There is no consensus. The defendants sincerely believe that the very existence of the Union will increase the burdens of administration and constitute a threat of essential discipline and control. They are apprehensive that inmates may

[3]P. Remick, *In Constant Fear* (J. Shulman ed. 1975).
[4]P. Keve, *Prison Life and Human Worth* (1974).

use the Union to establish a power block within the inmate population which could be utilized to cause work slowdowns or stoppages or other undesirable concerted activity. Other experts and institution administrators discount these apprehensions. Fred Morrison, Jr., Executive Director of the North Carolina Inmate Grievance Commission and a member of the Legislative Commission on Sentencing, Criminal Punishment, and Rehabilitation, stated in an affadavit filed in this case:

> I have read the Constitution and By-laws of the North Carolina Prisoners' Labor Union, Inc. and on Christmas Day, 1974, I met personally with several inmate organizers and officers of the Prisoners' Union (NCPLU) to discuss with them the philosophy and plans of the Union. On this basis, it is my considered opinion that the North Carolina Prisoners' Labor Union, Inc. does not pose a danger to the North Carolina Department of Correction or other prison programs, nor do I believe that the Prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission.

Warden James W. Mullen of the Rhode Island Adult Correctional Institution has permitted the National Prisoners' Reform Association, to which 99 percent of the inmate population belong, to function in his penitentiary for some four years. He continues to permit it, and while not enthusiastically for it, concludes that it is going in a positive direction and on balance is more helpful than harmful. Director Keve of Delaware points out that work stoppages have occurred at Walpole in Massachusetts and at Jersey State Prison at Leesburg at a time when neither institution had a union. In his own institution there is a union by the name of Prisoner Action Committee which Keve thinks has in no way endangered the security of the correction system and has sometimes helped management of the prison materially.

On conflicting expert opinion evidence we are left with no

firm conviction that an association of inmates is necessarily good or bad, and we decline to make the characterization. It is not necessary that we do so in order to decide the narrow issues remaining in the case.

III.

In a penal system that permits inmates to belong to a corporate union or organization, what are the rights of the prisoners and the union under the first amendment and the equal protection clause of the fourteenth amendment?

> We start with the familiar proposition that "[l]awful incarceration brings about the necessary withdrawal or limitations of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v. Johnston*, 334 U.S. 266, 285 (1948). See also *Cruz v. Beto*, 405 U.S. 319, 321 (1972). In the First Amendment context a corollary of this principle is that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.
>
> *Pell v. Procunier*, 417 U.S. 817, 822 (1974).

We think *Pell* means that prisoners have a first amendment right to talk about any subject of interest to them that does not conflict with legitimate penological objectives of the institution. In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in suppressing expression on the subject—whether for or against. To permit an inmate to join a union and forbid

his inviting others to join borders on the irrational.[5]

The substantial interests of the state in its penal system are the maintenance of "security, order and rehabilitation." *Procunier v. Martinez*, 416 U.S. 396, 413 (1974). "[T]he limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved." *Id.* We are unable to perceive why it is necessary or essential to security and order in the prisons to forbid solicitation of membership in a union permitted by the authorities. This is not a case of riot. There is not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions.

Nor is there any evidence tending to show that the inmates intend to operate it to hamper and interfere with the proper interests of government. Defendants' apprehension of misuse is not shared by other prison administrators of equal expertise and experience. Although the Union is said to have been active for many months and to number some 2,000 members, the record is bare of any suggestion of concerted activity. If the day should ever come that inmates threaten concerted action to force compliance with their demands and to disrupt prison discipline, the Secretary and the Commissioner are fully empowered to not only stop further solicitation of membership but to put down the Union and its adherents to whatever extent may be necessary to restore and protect security and order.

All that we hold is that the defendants, having permitted membership in a union committed to peaceful means to effect change and reform, may not at the same time forbid solicitation of membership. The same considerations, of course, apply to literature. The defendants may not refuse receipt of the Union's publications on the ground that they are calcu-

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[5]Defendants have not defined "solicitation." It is not clear whether an inmate who speaks favorably of the Union to another inmate but stops short of extending an invitation to join is guilty of breach of discipline.

Because defendants do not limit union membership [*every* inmate may lawfully join, *i.e.*, 100% of the prison population] it is difficult to discern a rational basis for the no-solicitation rule.

lated to encourage membership in the organization or solicit joining.

Nothing we have said is meant to suggest that freedom of speech in the prison context is without limitation. Indeed it is not without limitation elsewhere, *e.g.*, pornography. *See Miller v. California*, 413 U.S. 15 (1973). Although difficult of enforcement, we doubt not that the administrators could lawfully forbid any discussion of means of escape, and certainly forbid the receipt of literature on the subject. But escape is per se a breach of security. The defendants' *own* hypothesis in this case is that the existence of the Union and membership in it are not dangerous, for otherwise they would surely have undertaken to forbid membership.

The other questions presented—whether the Union may mail its literature in bulk at the cheaper rate and whether inmate members may meet together—are soluble, we think, by application of the equal protection clause of the fourteenth amendment. We need not decide these questions in a vacuum because the record is clear that organizations other than the plaintiff union are permitted the bulk mailing privilege and that the administrators allow the JC's and others to meet within the institutions. In a free society, outside the walls, it is clear that government may not pick and choose depending upon its approval or disapproval of the message or purpose of the group. *United States v. Crowthers*, 456 F.2d 1074 (4th Cir. 1972).

The question is more difficult in the prison context, but we are inclined to think that the same principle applies except where the activity proscribed is shown to be detrimental to proper penalogical objectives, subversive to good discipline, or otherwise harmful. We do not mean to suggest that prison administrators must await the convening of a court to decide whether a given activity is likely to engender unrest and disruption or pose a threat to the security of the institution. Instead, we recognize that they must act quickly and upon their best judgment in appraising potential danger. But whether or not this particular union will prove to be in the long run harm-

ful or beneficial, there is nothing in this record to support a finding of present danger to security and order. Absent such an indication, we hold that the defendants must accord to the Union and the inmate members the same privileges accorded other organizations of inmates—neither more nor less. In so holding we think it appropriate, for purposes of clarity, to affirm these propositions:

1. Whatever right of association, if any, prisoners derive from the first amendment, they have no right to form or belong to a labor union for the purpose of taking concerted action to force their demands upon prison administrators.

2. With or without the utilization of a union, inmates may not lawfully band together to resist prison discipline.

3. Prison administrators may lawfully refuse to negotiate requests or demands from any group of prison inmates whether or not organized as a union or association of prisoners.

4. Prison administrators may refuse to contract with any group or union of inmates; moreover, any such contract is void under the law of North Carolina and of no effect whatsoever. *Adkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969).

5. Whatever the rights of prisoners to associate together may be, there is no right to assemble in such numbers, at such times, and at such places within the walls as they please. Even in free society, reasonable restrictions of time, place and manner are upheld against first amendment attack. *Pell v. Procunier*, *Procunier*, *supra* at 826; *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972); *Blasecki v. City of Durham*, 456 F.2d 87 (4th Cir.), *cert. denied*, 409 U.S. 912 (1972). Regulations designed to guard against excessive congregation of numbers of prisoners and to prevent the possibility of mass action and flash riot are prima facie valid and within the sound discretion of prison administrators.

IV.

We think the problems with respect to lawyer representation and the utilization of paralegals, to which we have referred, are peripheral to the subject matter of this litigation and do not require injunctive resolution. We are convinced the defendants have never countenanced interference by their subordinates with the sixth amendment right to counsel of inmates. Nor do the defendants refuse to permit counsel to be assisted by paralegals. What caused the trouble was the no-solicitation rule. What we have said about that with respect to the right of inmates to solicit others to join is dispositive of the right of lawyers, paralegals, and any other persons from free society to encourage or solicit membership in the Union. It would be incongruous for an inmate's first amendment freedom of speech to exceed that of a free person. We therefore hold that the defendants may not forbid lawyers, paralegals or any other persons from supporting the Union and encouraging inmates to join it orally or in writing.

But that does not mean that the defendants must permit outside persons, whether paralegals, lawyers or others, to enter the prison institutions for the purpose of soliciting membership in the Union. We hold, instead, that the defendants may prohibit entry for such a purpose.[6] The distinction is that although prison administrators may not control topics of conversation, they may, and indeed must, control access to the prison inmate population. Every time a gate swings open in a penitentiary, security is breached. Every entry presents the possibility of escape and every visitor is a potential hostage.

The admission of lawyers and their assistants (paralegals) to prison institutions is permitted only to serve the sixth amendment interest and may be lawfully denied for all other purposes. For example, if the lawyer for the Union seeks access to an inmate for the purpose of preparing an appeal of our decision in this case, he may not be denied; but if instead,

[6]We assume (the record is silent) that outsiders are not granted ingress to the prison units for purposes of soliciting membership in other organizations, *e.g.*, Junior Chamber of Commerce, and that such persons come into the prisons to plan a program or put on one or to help implement some rehabilitative project. If any outsider is permitted ingress for purposes of solicitation, we think equal protection would require pro tanto treatment of free persons interested in the Union. Likewise, it goes without saying that inmate members of the Union may become entitled to be visited by free persons who are engaged with them in legitimate union projects—to the same extent that other members of free society are admitted for like purposes.

he seeks access to an inmate to further the interests of the Union other than by preparation for litigation, he may be refused. We hold that admission in such circumstances must depend upon the dominant purpose of seeking access to an inmate. If the purpose is legitimate and protected by the sixth amendment right to counsel, we think the first amendment forbids attempts to control the subject matter of discussion. To be explicit, if a lawyer or paralegal genuinely needs to interview a prisoner with respect to pending litigation, the inmate's right of representation does not vanish when in the course of the interview the lawyer remarks that he favors the Union and hopes the prisoner will join it.

We reiterate: what the defendants can control is access, not topical discussion. It is true, of course, that the rule we adopt is subject to abuse: a lawyer may represent falsely to the prison administrators that his paralegal needs access to an inmate to prepare a complaint. But our faith in the integrity of the bar is sufficient that we are not gravely concerned. And if there should be an occasional abuse, it is not too great a price to pay for liberty of speech enshrined in the first amendment and the right of representation assured by the sixth.

We hold that plaintiffs are entitled to only limited injunctive relief as follows:

1. Inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; provided, however, that access to inmates by outsiders for the purpose of furthering the interests of the Union and soliciting membership may be denied.

2. The Union shall be accorded the privilege of bulk mailing to the extent, and only to the extent, that such a privilege is accorded other organizations.

3. The Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations, and to the extent, and only to the extent, that other meetings of prisoners are permitted.

All other relief is denied.

Costs will be taxed against the defendants.

APPENDIX B

Filed April 12, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

THREE-JUDGE COURT

NO. 75-0089-CRT

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,

Plaintiff,

v.

DAVID L. JONES, Secretary of North Carolina Department of Correction; RALPH EDWARDS, Commissioner of North Carolina Department of Correction,

Defendants.

JUDGMENT

Pursuant to the findings and conclusions set forth in the Memorandum Opinion made and entered in this cause March 16, 1976, it is the ORDER, JUDGMENT and DECREE of this Court that:

Defendants David L. Jones, individually and in his official capacity as Secretary of the North Carolina Department of Correction; Ralph Edwards, individually and in his capacity as Commissioner of the North Carolina Department of Correction, their agents, employees, successors in office and any others acting in concert with them, be and each is hereby ENJOINED as follows:

1) Inmates and all other persons shall be permitted to solicit and invite other inmates to join the plaintiff Union orally

or by written or printed communication; provided, however, that access to inmates by outsiders solely for the purpose of soliciting membership may be denied except that inmate members of the Union may become entitled to be visited by free persons who are engaged with them in legitimate Union projects to the same extent that other members of free society are admitted for like purposes.

2) Free persons otherwise entitled to visitation with inmates, be they attorneys, paralegals, friends, relatives, etc. shall not be denied access to such visitation by reason of their association or affiliation with the Union.

3) The Union shall be accorded the privilege of bulk mailing to the extent that such a privilege is accorded other organizations.

4) The Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations, and to the extent that other meetings of prisoners are permitted.

5) Defendants shall not endeavor to harass, impede, transfer, subject to discipline, or otherwise punish inmates for the exercise of any of the rights established in this Judgment.

6) The Court costs incurred in these proceedings be and hereby are taxed against the defendants.

Done this the 8th day of April, 1976.

J. BRAXTON CRAVEN, JR.
United States Circuit Judge

ALGERNON L. BUTLER
Senior United States District Judge

FRANKLIN T. DUPREE, JR.
United States District Judge

APPENDIX C

Filed April 26, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Three-Judge Court

No. 75-0089-CRT

NORTH CAROLINA PRISONERS'
LABOR UNION, INC.,
on behalf of itself and all its members,

Plaintiff

v.

DAVID L. JONES, Secretary of the
North Carolina Department of Correction;
RALPH EDWARDS, Commissioner of the
North Carolina Department of Correction,

Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that David L. Jones, Secretary of the North Carolina Department of Correction, and Ralph Edwards, Director of the Division of Prisons of the North Carolina Department of Correction, the Defendants above named, hereby appeal to the Supreme Court of the United States from the final judgment entered in the above-captioned action on the 12th day of April, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1253.

RUFUS L. EDMISTEN
Attorney General

JACOB L. SAFRON
Special Deputy Attorney General

ATTORNEYS FOR DEFENDANTS
Justice Building
Raleigh, North Carolina 27602

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 1976, a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid, to Norman B. Smith, Esquire, 816 Southeastern Building, Greensboro, North Carolina 27401 and Deborah G. Mailman, Esquire, 115½ West Morgan Street, Raleigh, North Carolina 27601, Attorneys for Plaintiff.

JACOB L. SAFRON
Special Deputy Attorney General

APPENDIX D

General Policy

The Inmate's Grievance Procedure consisting of the Division of Prison's Internal Inmate Grievance Procedure in conjunction with the Inmate Grievance Commission created by the General Assembly is the only formal authorized method of handling inmate grievances.

All employees of the Department of Correction are prohibited from negotiating with any organization declaring itself to be or acting as an inmate labor organization. Any person, not an employee or person in the custody of the Department of Correction, purporting to be a representative or agent of such an organization, shall be prohibited from entering Department of Correction property, except to the extent that such persons would be permitted to enter Department property as a legitimate visitor under any other provision of the Department of Correction policy.

Any person, representing himself to have a legitimate purpose to be upon Department of Correction property or having a right to be on Departmental property through a privilege granted to him under Departmental regulation, who is subsequently determined by the Secretary of Correction or the Director of the Division of Prisons to be an agent or acting on behalf of an inmate union, shall be permanently prohibited from entering Department of Correction property. Any employee who acts as a representative or permits himself to be an agent of such an inmate union shall be subject to immediate dismissal.

No employee of the Department shall authorize the use of Departmental facilities for such organization, negotiate with, bargain with, or otherwise enter into discussion with such an organization or representative of such organization, nor permit such organization to hold meetings or assembly on Departmental property.

Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union. If the officer in charge has reason to believe that correspondence between inmates concerns organization of an inmate union in violation of this rule, then the correspondence may be censored and if necessary delivery may be withheld. Any inmate accused of soliciting shall be subject to discipline for agitating and failing to obey a lawful order. The unit superintendent or his designated representative shall proceed against the inmate accused in accordance with established Departmental procedures.

This regulation is hereby promulgated as the official policy of the Department of Correction. This the 26th day of March, 1975.

DAVID L. JONES, Secretary of
Department of Correction